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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,959	11/24/2003	Terry Leseberg	L541.12-0001	5204

164 7590 03/28/2007  
KINNEY & LANGE, P.A.  
THE KINNEY & LANGE BUILDING  
312 SOUTH THIRD STREET  
MINNEAPOLIS, MN 55415-1002

EXAMINER
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SELF, SHELLEY M

ART UNIT	PAPER NUMBER
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3725

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/28/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/720,959	LESEBERG, TERRY	
	<b>Examiner</b>	<b>Art Unit</b>	
	Shelley Self	3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 12-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 3-8, 12 and 13 is/are allowed.
- 6) ☐ Claim(s) 1, 2 and 14-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Amendment*

The amendment filed on January 25, 2007 has been considered but is ineffective to overcome the prior reference.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 14-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Ramun (6,994,284). Ramun discloses an all terrain vehicle containing a shear system comprising a beam (20) attached to the vehicle (Abstract, Examiner notes demolition equipment to include a vehicle/backhoe ), the beam extending from the vehicle; and a shear (fig. 3) attached to the beam, the shear comprising a first shear blade member (12) having a proximal end and a distal end (fig. 3), with a blade (190) located adjacent the distal end (fig. 3) ; a second shear blade member (14) having a proximal end and a distal end (fig. 3 ), with a blade (190) located adjacent the distal end (fig. 3), the second shear blade member being movable relative to the first shear blade member to cut an object placed between respective blades of the first and second shear

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blade members; a first linking member (24) having a first end pivotally fastened (26) to the proximal end of the first blade member (12); a second linking member (28) having a first end pivotally fastened (30) to the proximal end of the second blade member (14); the first and second linking members pivotally connected (fig. 3) about a common pivot point (34); and wherein the shear is connected to the beam and not directly connected to the all terrain vehicle (fig. 1-3).

As to the beam, Examiner notes Ramun to inherently disclose a beam, as a backhoe is known in the art to have a boom, i.e. a beam extending from the backhoe to which demolition, cutting/shearing/cutting equipment is attached.

With regard to claim 15, Ramun discloses a support member (38).

With regard to claim 16, Ramun discloses the support member is a first hydraulic cylinder (38; col. 6, lines).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

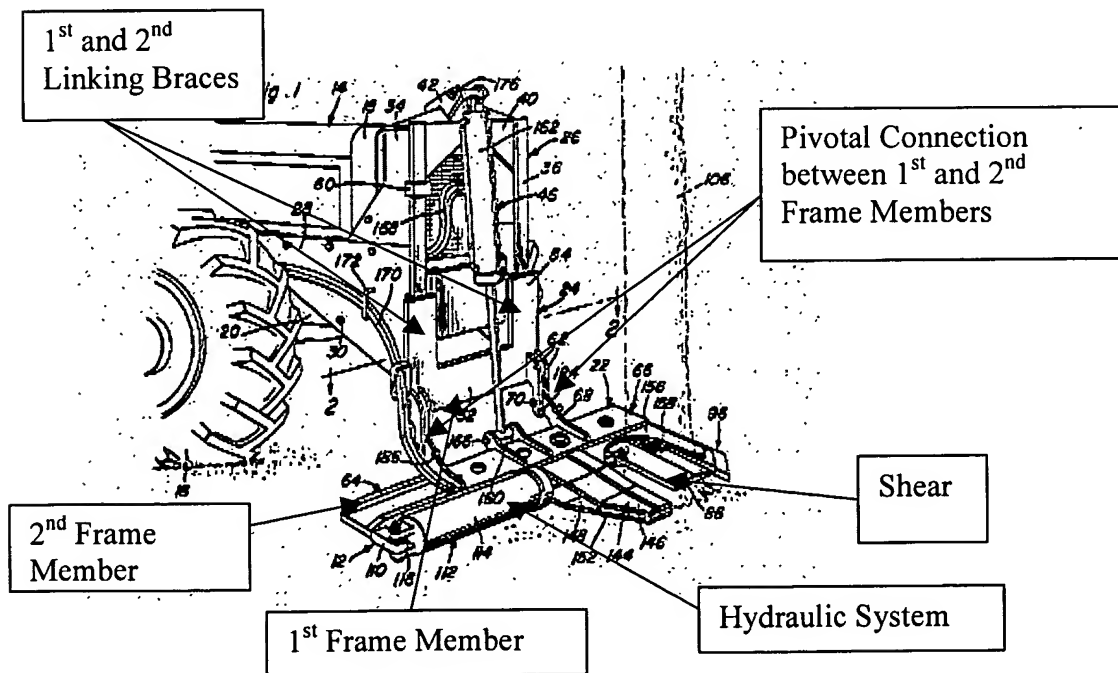
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over White (3,913,641) in view of Meece et al. (3,327,745). White discloses a shear for mounting to an all terrain vehicle comprising a frame (fig. 1), the frame comprising a first frame member comprising a single non-pivoting stanchion (52) for connection to the vehicle (fig. 1); and a second frame member comprising a metal component (col. 9, lines 30-34) tube (66; 72, 74) pivotally

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connected (70, 166; figs. 1, 9) to the first frame member, the second frame member (66) being transverse the first frame member (fig. 1) and being pivotal about a horizontal axis (fig. 1, 9); a shear (86, 94, 108) attached to the second frame (66; fig. 1); and a hydraulic system (170, 172, 46, 112) attached to the shear, the hydraulic system being mounted to the all-terrain vehicle (Examiner notes the hydraulic hoses 170, 182 extending from the cylinder 112 to the vehicle).

As to the recitation of a “*shear*”, Examiner notes the sharp edge (94) of the blade (86) working in conjunction with the anvil (108) of the blade assembly (22) serve to shear a tree/vegetation, thus disclosing a “*shear*”.



White does not disclose the second frame member comprising a tube. Meece discloses in a similar art, a shear for a mounting to an all-terrain vehicle. Meece teaches a frame having first

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(25) and second members, the second member (14) constructed as a tube and being transverse the first member. Meece teaches this construction for stability during cutting of a object/tree placed between shear blades of the assembly. Because the references are from a similar art and deal with a similar problem, i.e., tree cutting via a shear assembly attached to a vehicle it would have been obvious at the time of the invention to one having ordinary skill in the art to replace, White's second transverse member (64) with a tube for increased strength and stability during operation as taught by Meece.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over White (3,913,641) in view of Meece et al. (3,327,745) as applied to claim 1 above, and further in view of Emery (5,174,098). Neither White nor Meece explicitly disclose a power source separate than that which powers the vehicle, a hydraulic pump or control system.

Emery teaches in a similar art a vehicle apparatus for cutting/severing vegetation/tree. Emery teaches the use of plural power sources (col. 3, lines 14-15). Emery teaches a power source to power the vehicle and a second power source (30, 64) to power the shear/cutting means for cutting vegetation (col. 3, lines 15-20). Additionally, Emery teaches the secondary power source (30) to be directly connected to a hydraulic pump (122, 124) for supplying hydraulic fluid via hydraulic lines (130, 132, 134) to the cutting/severing apparatus (col. 4, lines 5-17). Further Emery teaches a control system having valves and switches for controlling the hydraulic system (col. 4, lines 33-67 to col. 5, lines 1-67). Emery teaches that the use of a single power source to power a vehicle and a cutting apparatus may result in reduced or less than a predetermined amount of power supplied to the cutting assembly (col. 1, lines 49-53). Therefore, Emery

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teaches the use of separate power sources for powering the vehicle and the cutting assembly so as to deliver a predetermined amount of power to a cutting means (col. 2, lines 11-13) so as to efficiently cut/sever object/tree. Because the references are from a similar art and deal with a similar problem, (i.e. powering a vehicle and an associated means for cutting) it would have been obvious at the time of the invention to one having ordinary skill in the art to construct White having a secondary, separate power source and hydraulic pump so as to supply a predetermined amount of power to the means for cutting for efficiently cutting/severing an object/tree as taught by Emery.

***Allowable Subject Matter***

Claims 3-8, 12 and 13 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record does not disclose or fairly suggest a cutting apparatus comprising *a second frame member extending forward relative to the all-terrain vehicle; first and second blade members and first and second linking members, wherein the first blade member and the second blade member are pivotally connected to the second frame member about a common pivot point and wherein the first linking member being pivotally fastened to the proximate end of the first blade member and pivotally connected to a means for actuating in combination with the rest of the positively recited limitations as set forth in claim 3.*

Neither the prior art of record nor any combination thereof discloses the claimed invention as set forth in claim 3.

***Response to Arguments***

Applicant's arguments filed January 25, 2007 have been fully considered but they are not persuasive. Applicant's remarks are drawn to the failure of the prior art, White to disclose or fairly suggest "a single non-pivoting stanchion" and a "second frame member comprising a single metal tube". Applicants states, that Whites' structure (52) is of U-shape configuration having legs, 54 and one of the legs could be referred to as a stanchion, but the reference requires two and not a single as required by the current claim language. Applicant is arguing criticality of structure not positively recited. Examiner notes that the claims states, "*...a first frame member comprising a single non-pivoting stanchion...*", this recitation does not limit the structure to only a single or one non-pivoting stanchion, it merely states that a single stanchion must be present. The use of the open transitional phrase, "comprising" allows for the presence of additional structure in a prior art reference over that presented within the claim, i.e. the reference must include that structure positively recited within the claim but is not limited to only that structure. Therefore White's use of a more than a single stanchion anticipated the claimed language as set forth in claim 1. Accordingly, Applicant is arguing the criticality of *only a single stanchion* and such is not positively recited within the claims. Therefore, White does meet the limitation of a "single non-pivoting stanchion".

With regard to Applicant's argument that, White fails to disclose or fairly suggest a metal tube, Examiner notes agrees, that White fails to disclose this structure, however as noted above, a rejection is made in view of White over Meece.

Applicant further argues that Ramun fails to anticipated the claimed invention as recited in claim 14. Applicant states that Ramun fails to disclose a beam. This argument is not found



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pervasive, because Applicant clearly states the shearing assembly (fig. 1) is directly attachable to a backhoe. It is well known in the mechanical and harvesting as well as demolition arts that a backhoe contains a beam/boom for support and attachment of some cutting/shearing/crushing device. Because Ramun explicitly discloses the use of backhoe, Ramun does anticipate the claimed invention as it relates to claim 14. Such backhoe and beam/boom is clearly taught in Bot (5,419,380). Therefore, the 35 U.S.C. 102(e) rejection in view of Ramun stands.

Regarding Applicant's remarks regarding the improper combination of White and Ramun, Examiner notes these remarks to be persuasive, accordingly the rejection(s) in view White over Ramun are withdrawn.

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is 571-272-4524. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
**SHELLEY M. SELF**  
**PRIMARY EXAMINER**

March 22, 2007